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Single Bench

IN THE HIGH COURT OF JUDUCATURE OF AT BILASPUR
CHHATTISGARH

Criminal Revision No. 283 /2006

1616/06

Filed on 06/4/06
by Shri Vaishali Gupta Advocate
266/04/06
R. to D.R. (J)

APPLICANT : Tushar Patil, Aged about 25 years, S/o. Late Bhagwan Singh Patil, R/o. P.W.D. Colony, Qtr. No. 4, Naharpara (Besides Nahar), Anand Nagar, Raipur District Raipur (CG)

VERSUS

NON-APPLICANT : State of Chhattisgarh, Through: Police Station Telibandha, District - Raipur (CG)

CRIMINAL REVISION UNDER SECTION 397 READ WITH SECTION 401 OF THE CODE OF CRIMINAL PROCEDURE

XI-HC-22

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आदेश पत्रक

मामला क्रमांक Cr Rev. 28/2006 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	22.06.2006 Applicant Tushar Patil by Shri Manoj Paranjpe, Advocate. State by Shri D.K.Gwalre, Dy. Government Advocate. This revision was finally heard today. The revision is directed against the order dated 04.01.2006 passed by the 14th Additional Sessions Judge (Fast Track Court), Raipur in Sessions Trial No. 4/2006 whereby charge under Section 376 I.P.C. was framed against the applicant. Brief facts are that the prosecutrix, aged about 19 years, lived with her mother near the school in Shyam Nagar. Her mother worked as maid-servant in several houses. The prosecutrix was also working in a house at Shyam Nagar as a baby-sitter. The applicant was also visiting that house as a dance teacher. In January 2003 the prosecutrix met the applicant there for the first time and both fell in love and developed sexual relationship. The applicant took a house in Shatabdi Nagar on rent and continued cohabiting with the prosecutrix on the assurance of marriage. In January 2005 the prosecutrix became pregnant. She delivered a male child on 28th August 2005 in Wadhwani Nursing Home. Since the applicant refused to marry her, a report was lodged by the mother of the prosecutrix in *Mahila Thana,* Raipur. Another report was lodged by the prosecutrix on 2.10.2005 stating that sexual	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

intercourse by the applicant was without her consent. In her statement under Section 161 Cr.P.C, the prosecutrix stated that while she used to baby-sit in the house at Shyam Nagar, the appellant used to visit there as a dance teacher where she fell in love with the appellant and established sexual relationship with the applicant. Thereafter, the appellant assured to marry her and took a house on rent in Shatabdi Nagar and continued to cohabit with her. On the basis of these facts, learned trial Judge framed charge under Section 376 I.P.C. against the applicant, vide impugned order.

Shri Manoj Paranjpe, learned counsel for the applicant has assailed the impugned order on the ground that even if the entire prosecution story, as unfolded by the material placed by it under Section 173 Cr.P.C. is accepted at its face value, even a *prima facie* case under Section 376 I.P.C. is not made out against the applicant. It was argued that the statement of the prosecutrix recorded under Section 161 Cr.P.C. clearly revealed that the assurance to marry was given subsequently after she fell in love with the applicant and had established sexual relationship. It does not show that when the applicant cohabited with the prosecutrix for the first time, it was on an assurance of marriage with the prosecutrix. Placing reliance on *Uday v. State of Karnataka* **2003 AIR SCW**

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1035 it was argued that the consent of the prosecutrix in the sexual intercourse with the applicant was free, voluntary and consciously given and not in consequence of any misconception of fact. On these grounds, it was argued that there was no material to show the existence of a case under Section 376 I.P.C. *prima facie* against the applicant.

On the other hand, Shri D.K.Gwalre, learned Dy. Government Advocate has argued in support of the impugned order and pointed out that in the first information report the prosecutrix had stated that the sexual intercourse committed by the applicant with her was without her consent and also under an assurance of marriage.

Having heard the rival contentions, I have perused the record of Sessions Trial No.4/2006. It is well settled that the test for framing a charge against an accused is that the material produced by the prosecution if accepted on its face value would reveal the existence of an offence under which the accused was to be charged.

Applying the above touch-stone to the material produced by the prosecution, I am of the considered opinion that even if the entire material produced by the prosecution under Section 173 Cr.P.C. is accepted at its face value, it does not even *prima facie* disclose the commission of offence under Section 376 I.P.C. by the

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applicant. The prosecutrix was aged 19 years and was a woman of discretion. Her statement under Section 161 Cr.P.C. clearly revealed that in the house at Shyam Nagar where the applicant used to visit as a dance teacher and where she used to work as a baby-sitter, she fell in love with the applicant and had established sexual relationship with him. In her statement, it does not find mention that when the applicant established sexual relationship with her for the first time, it was under an assurance of marriage by the applicant. The prosecutrix did not lodge any report for a period of two years after sexual intercourse was first done by the applicant with her. Even after she conceived from the applicant and delivered a male child on 28th August 2005, the F.I.R. was lodged after considerable delay on 2.10.2005. Thus, the material produced by the prosecution clearly shows that the prosecutrix had freely, voluntarily and consciously consented to the sexual intercourse with the applicant and her consent was not in consequence of any misconception of fact.

Relying upon *Uday v. State of Karnataka* **2003 AIR SCW 1035**, I am of the considered view that there is no sufficient ground to proceed against the applicant/accused as no *prima facie* case under Section 376 I.P.C. exists against the applicant. The impugned order framing charge under Section 376 I.P.C. against

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the applicant is, therefore, *per se* illegal and deserves to be set aside.

In the result, the criminal revision is allowed. The impugned order dated 04.01.2006 passed by the 14th Additional Sessions Judge, Raipur is set aside. The applicant/accused is discharged under Section 227 Cr.P.C.

Sd-/
Dilip Raosaheb Deshmukh
Judge